

EXHIBIT B

(Part II)

1 partial revolution machine that is slow motion
2 compared to the -- you know, to -- to punch
3 presses and has -- the general purpose of the
4 machine has you migrating and spending lots of
5 time between strokes.

6 The -- it is a completely different
7 animal, and I thought one of your witnesses did
8 a wonderful job of educating you on the
9 differences between the two machines.

10 Q. Is a -- is riding the pedal the most
11 prevalent cause of accidental activation of
12 power presses?

13 A. Yes.

14 Q. And is it true that the more difficult
15 it is to step into and out of a foot control the
16 more likely it is that operators will ride the
17 pedal?

18 A. Yes.

19 Q. Is it also true that the -- that
20 85 percent of all machine accidents are caused
21 by the user and only 5 percent of machine
22 accidents are caused by the machine?

23 A. Yes. Those were the statistics that I
24 have published.

1 relation to gates and the use of gates that your
2 writings and your teachings have indicated that
3 they increase a danger of riding the pedal?

4 A. They decrease one danger, they increase
5 another one. That's what the whole purpose of
6 my work is.

7 Q. My question is very straightforward.
8 Would it be true that your teachings have been
9 that the use of gates move the foot controls
10 over to the right side of your schematic which
11 are more hazardous foot controls?

12 A. No, no, no, no, that's not what the
13 article says.

14 Q. Okay.

15 A. What the article says is the likelihood
16 of riding the pedal increases from left to right
17 as you go to the gated unit.

18 As you go from completely open to
19 completely closed with the mousetrap, the
20 likelihood of riding the pedal goes up. And
21 that's a bad thing except when you solve the
22 problem like Linemaster has, and if you have
23 a -- if you have the locking plate plus single
24 stroke control on your machine, you have now

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1 solved the problem. And so you are now able to
2 take care of the accidental stepping onto the
3 pedal which gets better and better as you have
4 the gate in front and you are able to use that
5 wonderful feature of the gate because you
6 haven't introduced a new hazard in the machine.

7 Q. Does Linemaster continue to sell the
8 ungated foot control?

9 A. Sure, they sell a full line of controls
10 that do everything from completely unguarded
11 the -- to, you know, this whole menu of things.

12 Q. Has Linemaster ever indicated to your
13 knowledge in any of their literature that using
14 an ungated foot control on a press brake is
15 dangerous?

16 A. No, because they are not dummies. They
17 don't tell you what foot control to use for a
18 given machine. They don't do that. They leave
19 that to the manufacturer of the machines to
20 select from their menu and all the other
21 competitors' menus, select the ones that are
22 good for your machine.

23 Linemaster doesn't tell you on a punch
24 press to use this, on a press brake to use that.

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1 Q. -- I thought you said that if the foot
2 control doesn't have a gate on it, you would
3 still consider that foot control to be
4 defective?

5 A. That's correct.

6 Q. Okay. Then I don't know what that
7 diatribe was. That's my point. So your -- so
8 the concept you are telling us today is that
9 regardless of whether or not that foot control
10 has a locking plate, if it doesn't have a gate,
11 it is defective?

12 A. That's correct.

13 Q. That's what I understood your testimony
14 to be.

15 A. But that's not enough.

16 Q. Go ahead.

17 A. But it is not enough. I also want the
18 locking plate on the thing.

19 Q. I understand what you are saying.

20 A. Okay, but --

21 Q. I understand what you are saying.

22 A. Okay, that's what I am saying.

23 Q. I am -- I was just trying to confirm
24 up, I am not sure why it keeps being said that

1 Q. I understand. Is that something the
2 end user does when they -- is that something an
3 end user does?

4 A. If you want to use HOOD, that's what
5 you have to do.

6 Q. Is HOOD a good philosophy?

7 A. HOOD is a -- one of the working
8 philosophies, but it is not particularly a good
9 one.

10 Q. Is HOOD a beneficial philosophy?

11 A. It -- overall it is not.

12 Q. Are there more disadvantages to HOOD
13 than there are advantages to HOOD?

14 A. Well, there are --

15 Q. I am just trying to figure out what you
16 are saying. I don't understand.

17 A. What I am saying is the disadvantages
18 completely outweigh the advantages. That's why
19 HOOD has been no longer -- remember at one time,
20 I don't have to remind you of it, HOOD was put
21 into OSHA and said you are required to use HOOD
22 and they then after hearing said that was a
23 mistake, we will take it out, and so you no
24 longer have to do that.

1 The -- it destroys Americans. You
2 can't meet the code of ethics with HOOD. And
3 the engineers -- the engineering code of ethics
4 says the following, "An engineer shall hold
5 paramount the public safety, health and
6 welfare," meaning their economic welfare, "in
7 the discharge of his professional duties."

8 If you triple the cost of every product
9 that everybody has out there because you are
10 using some dumb manufacturing process like HOOD,
11 that is violating the code of ethics which is
12 supposed to be a trade-off among safety, cost
13 and function.

14 And there are other ways of doing
15 things. For example, a pull back device which
16 is now illustrated profusely in the -- in the
17 literature for press brakes, you put the things
18 in, your hands are in the die, if it starts to
19 come down, the pull back device pulls your hands
20 out. It is used in every punch press.

21 Q. And that's something the end user is
22 best responsible for doing also?

23 A. I agree, but it is a much better
24 philosophy. It is much more economical than the

1 thing that you have. Don't have accidents. Use
2 appropriate safety devices. So they were not
3 specific and offered no one any guidance. In
4 1973 OSHA gave no guidance whatsoever.

5 Q. And you may have misspoken. You
6 mentioned ANSI when you first started saying
7 that.

8 A. But ANSI did.

9 Q. Okay, and so it satisfied ANSI?

10 A. Well, it didn't really satisfy ANSI.

11 Q. That's what I am trying to figure out,
12 what --

13 A. Here is the problem that you have with
14 ANSI --

15 Q. I thought your report said it did, but
16 go ahead.

17 A. Well, ANSI wants you to inhibit
18 accidental activation, inhibit which means to
19 minimize the accidental activation, and you
20 can't eliminate it. You can inhibit it. So
21 when you have devices out there that minimize or
22 inhibit the thing better than others, you are
23 obligated to use them. I mean, you know, all
24 you have to do is have a foot control and have a

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1 cover on the thing and say, gee, the cover
2 inhibits the thing; okay?

3 Q. Do you know of any ANSI provision that
4 was violated by this foot control which she was
5 using?

6 A. I think that in my view there is one.

7 Q. Yes, you can give me a verse.

8 A. It is in my report.

9 Q. Yes, if you could. We have marked that
10 as Exhibit C and here it is.

11 A. Very good. Here is the number, it is
12 4.2.4.2.4, foot control actuation prevention,
13 "The foot control shall be protected so as to
14 inhibit accidental activation by falling or
15 moving objects or by somebody stepping on it."

16 That's what's been violated because you
17 haven't inhibited it, the -- which should ask
18 you to do the best job you can. Remember what
19 the name of the things are.

20 Q. Did you ever testify before that this
21 relates to stepping onto -- whenever you were
22 representing the foot control industry or the
23 press brake industry, have you ever testified
24 under oath that this only relates to stepping

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1 a footswitch. And that's what the supervisory
2 key is all about. So if she couldn't do it --
3 if I can't do it, how is she going to do it?

4 Q. Do you have any indication that the key
5 was lost at the time of her injury?

6 A. No, no, no, no, I think they
7 deliberately said in order for her to do this
8 thing, they have to turn the key and switch it
9 over to foot and away from, you know, from the
10 two-hand control, the hostage control, so
11 they -- what I am saying is they have
12 deliberately said this is where you want to do
13 it and there is nothing she could do to switch
14 back because they have locked out any point of
15 operation device. She has now got to use the
16 system that she is using.

17 Q. Did you read the --

18 A. It is tragic.

19 Q. Did you read the testimony from the
20 employees that said she did have access to the
21 key and that when they operated the press brake
22 and performed the same function that she was
23 operating that they used the two-palm button
24 switch?

1 something that could cause her fingers to be cut
2 off?

3 A. I don't know one way or the other. I
4 have not seen any of that testimony.

5 Q. Have you ever been told by Mr. Hartman
6 as to -- that you haven't been provided with all
7 of the deposition transcripts?

8 A. How would I know that I haven't been
9 provided with them all?

10 Q. I said has he ever told you that he
11 didn't give you all the deposition transcripts?

12 A. No, he didn't say one way or the other.

13 Q. Have you ever heard any explanation as
14 to why you would not have been provided with
15 those employees' --

16 A. No, we --

17 Q. -- deposition transcripts?

18 A. -- just never discussed it.

19 Q. Is that something you would want to
20 see?

21 A. I don't know. I mean I don't need to
22 see anything based on the opinions I am giving
23 you.

24 Q. Is that something you would want to see

1 as an expert testifying in front of the jury?

2 A. Not with the testimony that I am giving
3 you. I have one, the one defect which is
4 completely independent of what those employees
5 have to say.

6 Q. Well, wouldn't her ability to choose
7 the point of the two-palm button switch have
8 some impact on your decision making?

9 A. Absolutely not because she doesn't know
10 anything about choosing point of operation. She
11 has been told to do something and she has done
12 exactly what she has been told to do.

13 Q. My point is there is contrary testimony
14 to that --

15 MR. HARTMAN: I am going to object and --

16 THE WITNESS: I don't believe --

17 MR. HARTMAN: -- indicate for the record
18 that Mr. Robinson is mischaracterizing the
19 testimony. I am not going to go into detail so
20 he does -- says I don't taint this witness. But
21 he is clearly mischaracterizing the testimony in
22 such a way to formulate these questions which is
23 not supported by the depositions he has taken.
24 No one has indicated that she had the ability to

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1 report somebody to them, I am not allowed to
2 find out the disposition of the case, you know,
3 so you can't get the feedback you need to
4 evaluate them.

5 Q. And you believe you can represent
6 Linemaster relative to a foot control that was
7 sold with the Heim product or Rousselle product
8 and then represent a plaintiff against Heim or
9 Rousselle --

10 A. Oh, sure.

11 Q. -- relative to a foot control case?

12 A. Sure.

13 Q. Have you ever testified that you can't
14 do such a thing, it would be unethical to do so?

15 A. No.

16 Q. Do you remember addressing with a
17 number of attorneys these -- this ethical issue
18 of representing one company and then
19 representing a party adverse to that same party
20 you represented?

21 A. Oh, I am sure, I am sure that has been
22 part of my presentations on occasion.

23 Q. Is there any situation where an ungated
24 foot control in use with a press brake is not

1 defective?

2 A. No.

3 Q. The testing that you did --

4 A. Yes.

5 Q. -- relative to this case, I understand
6 through Mr. Ulmenstein that all of the test
7 subjects were employees at one time of Triodyne;
8 is that correct?

9 A. That is correct.

10 Q. Have you ever -- why didn't you go try
11 to find someone that's neutral?

12 A. They were neutral. It is a
13 double blind test. Ulmenstein doesn't know what
14 I was doing nor did the people know what I was
15 doing. Nobody knew what I was after and the
16 concepts behind it including Ulmenstein.

17 Q. Did you never tell them who you were
18 representing?

19 A. Oh, it has nothing to do with
20 representing.

21 Q. Did you tell them who you were
22 representing?

23 A. I don't think so, but that has nothing
24 to do with it.

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1 when she was injured?

2 A. The best I can determine is that she
3 was either seated or leaning against the -- a
4 seat, that's the best. I have not interviewed
5 her, you know, to find out more.

6 Q. Your test involved standing people?

7 A. Right.

8 Q. Dissimilar to the seated or leaning.

9 A. Of course they are dissimilar. I am
10 not trying to simulate what she is doing. I am
11 trying to do something much more effective.

12 Q. And what would that be?

13 A. I am trying to develop a worst case
14 scenario, the -- and that's what I did. I --
15 and I am really pleased that it worked almost
16 perfectly the first time, developed a scenario
17 that you almost 100 percent of the time will
18 accidentally activate a switch. And as soon as I
19 put the gate on, it is 100 percent of the time
20 you will never activate the switch.

21 Q. You had people watch the video, you had
22 people standing there and stepping into the foot
23 control, one of which had a gate and one of
24 which did not; is that an accurate description?

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1 A. Right, absolutely.

2 Q. That's not the way Tina Lindquist's
3 injury occurred; is it?

4 A. Of course not. It has nothing to do
5 with that.

6 Q. Is there any similarity in the test
7 that you conducted and the manner in which Tina
8 Lindquist was injured?

9 A. None whatsoever. That's not what the
10 test was for.

11 Q. Did Tina Lindquist ever tell you that
12 she accidentally put her foot into the foot
13 control?

14 A. She didn't tell me anything.

15 Q. Did you ever read anything in her
16 testimony that indicated she accidentally put her
17 foot into the foot control?

18 A. I don't recall her saying that. I
19 think she said she wasn't riding the pedal and
20 had taken her foot out of the control and
21 then -- but I don't recall her saying anything
22 about what she did. I don't know that she knew
23 what she did.

24 Q. Have you assumed -- but you have

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1 A. Yes.

2 Q. And for that to have occurred she would
3 have had to accidentally stuck her foot the entire
4 way in such that she activated that lock plate
5 that you mentioned; right?

6 A. Absolutely right.

7 Q. Has she ever told you that she stuck
8 her foot all the way in and actuated that kick
9 plate?

10 A. Everything we know about her we will
11 have to get from her deposition because I didn't
12 interview her.

13 Q. Okay. And her deposition testimony did
14 not indicate that she stuck it all the way in
15 and hit that kick plate?

16 A. Right, I don't think she knows.

17 Q. Well, did you see that she has
18 indicated she did not accidentally put her foot
19 into that foot control?

20 A. I don't think she said that either.

21 Q. Do you have your summary of the --

22 A. Unfortunately --

23 Q. Of her testimony?

24 A. I don't have the summary, and I didn't

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1 Q. You indicated that she would have had
2 to hit the kick plate to activate that press
3 brake?

4 A. Yes.

5 Q. Isn't it possible for her to have been
6 riding the pedal and for I think some of the
7 instances you mentioned were sneezing to have
8 occurred where you then hit the -- in the same
9 way if your foot was outside the foot control
10 but your foot is inside the foot control; isn't
11 that possible?

12 A. It is possible. The best I can tell
13 you it is possible. It is really unlikely that
14 that's going to happen.

15 Q. Yeah, why would that be?

16 A. Because anyplace where you -- see, the
17 other pedals on the punch press, anyplace you
18 touch down on the pedal you get a stroke.

19 On this one you can't just push down
20 anywhere. You have to first push your foot all
21 the way back in and then come down on the thing
22 and that the likelihood of doing this is
23 diminimus compared to the punch press where if
24 you ride the pedal, anyplace you touch it, you

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1 are in trouble.

2 Q. How much force was necessary on this
3 particular foot control to push that lock plate?

4 A. I don't think I measured the force.

5 Q. I guess you couldn't have because you
6 never saw the foot control; right?

7 A. No, no, no, no, I have duplicate, you
8 know, I have my own --

9 Q. No --

10 A. -- things. I don't think I have ever
11 measured it.

12 Q. I meant -- okay, you never measured on
13 any exemplar?

14 A. Right.

15 Q. -- with anyone whatsoever?

16 A. Right.

17 Q. What -- your opinion is that she
18 accidentally stuck the foot in, hit the kick plate
19 and pushed down?

20 A. Yes.

21 Q. She went horizontally and then
22 vertically.

23 A. Right.

24 Q. What caused her to do that in your

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1 opinion?

2 A. The -- what happens is all you have to
3 do is reach for the part and reaching for the
4 part will shift your body forward to do this.

5 Q. Do you have any indication that that's
6 actually what happened here?

7 A. It has to have happened.

8 Q. How far did she move her body to reach
9 for the part?

10 A. The -- I don't know how far she moved
11 her body, but she is going to step up the
12 control in a convenient location so that she can
13 reach the -- put parts in and parts out and hit
14 the control in the most convenient way.

15 Q. How far does the foot -- what's the
16 minimum distance the foot would have to move to
17 enter the control, the foot control, activate
18 the kick plate, and then depress the pedal?

19 A. Well, it would be the distance that her
20 foot has to move into the unit before it touches
21 the kick plate.

22 Q. Right.

23 A. It has to move in that much. I think
24 it is 4 or 5 inches. You know, I will get a

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1 pedal and I will measure it.

2 Q. Has she ever said that her foot moved
3 4 or 5 inches?

4 A. Oh, she doesn't have a clue what her
5 foot is doing. If she knew that, she would not
6 have had the accident. I mean she doesn't want
7 to reach into the pedal. She wants to reach her
8 hands into the machine.

9 Q. Well, would leaning -- would the --
10 this, do you call this an involuntary movement
11 of the foot?

12 A. It is probably -- I think it is
13 involuntary. I don't think it is a voluntary.
14 Voluntary, you know, you are advertently trying
15 to activate the machine. She doesn't want to
16 activate the machine. She wants to reach in
17 with her hands and doesn't want to put her foot
18 on the foot pedal, she doesn't want to do that.

19 Q. Why couldn't this involuntary movement
20 of the foot occur if her foot was already inside
21 resting on the pedal? What's the difference?

22 A. It is -- it is so unlikely that that
23 would happen.

24 Q. I am just trying to hear as to why.

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1 A. Because --

2 Q. All --

3 A. -- you have --

4 THE COURT REPORTER: Pardon me, I can only
5 get one at a time.

6 MR. ROBINSON: Sorry.

7 THE COURT REPORTER: So we have to wait for
8 the answer to be finished and the same --

9 THE WITNESS: There is a very large movement
10 you have to make with your foot to get to that
11 back plate. You got to get -- you know, you
12 have to do something to get to the back plate
13 where on the punch press I don't care where you
14 touch it, you touch it the front, the middle,
15 anyplace. There is only one place that you can
16 do it, you have got to get your foot in and then
17 put the pressure down.

18 BY MR. ROBINSON:

19 Q. I wanted you to explain it, all the
20 reasons that you know as to why her foot also
21 couldn't have involuntarily moved forward while
22 she was riding the pedal as opposed to moving
23 the extra distance with the foot outside of the
24 foot control?

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1 A. The -- if she is really riding the
2 pedal, she has already established an
3 equilibrium. And when she moves forward, it is
4 just like my foot on the ground, it will
5 actually resist movement.

6 You put your foot down, the friction
7 stops the thing from sliding forward. If she
8 has her foot resting on this pedal, the -- it
9 actually will stop her from moving forward into
10 this kick plate.

11 Q. Do you know where her foot was before
12 it began this involuntary movement forward?

13 A. She -- I think that she is reporting
14 her foot was not in the pedal at all.

15 Q. Do you know if it was on the ground?

16 A. Don't know where it is.

17 Q. Well, if it was on the ground, then
18 that would also suggest as you just indicated
19 that that friction would minimize the likelihood
20 of the involuntary movement forward; right?

21 A. It is. It would do that if her foot
22 was on the ground. But if she is stepping
23 forward and needs equilibrium because she is
24 reaching forward, you know, if you are standing

1 THE COURT REPORTER: I just -- I can't get
2 both of you. I am trying to get every single
3 word --

4 MR. ROBINSON: I understand.

5 THE COURT REPORTER: -- and I can't get
6 every word.

7 MR. HARTMAN: Okay, I understand.

8 THE WITNESS: We will slow down.

9 MR. HARTMAN: Okay, I want to interject
10 something, Mr. Robinson is being extremely
11 argumentative with this witness. I have let it
12 go on for way too long. There is a basic
13 principle that's been applied to the situation.

14 MR. ROBINSON: I object to your speaking
15 comments again, Mr. Hartman.

16 MR. HARTMAN: Okay, you are entitled to it.
17 At some point in time this has to end. He
18 cannot become argumentative with the witness.
19 He cannot give a -- sit there and use his body
20 ambulations and configurations to try and
21 distort a well known fact by anyone who knows
22 anything about the subject matter about the
23 theory of ambulation.

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1 BY MR. ROBINSON:

2 Q. Sir, back to what we are talking about,
3 I am talking -- I know you said if you put your
4 feet behind you. I am talking about if you put
5 your feet flat on the ground, are your feet
6 moving when you lean your torso toward?

7 A. If I already have my feet in a stable
8 position that would allow me to reach forward --

9 Q. Yes.

10 A. -- with my feet in that position --

11 Q. Yes.

12 A. -- then I don't have to move them
13 forward anymore.

14 Q. So how far back do your feet need to be
15 before they begin to move with the forward
16 movement of the torso in a seated position?

17 A. You can't -- there is no way to answer
18 the question. There is no way to answer that
19 question.

20 Q. Aren't those significant --

21 A. You haven't given me the parameters to
22 answer.

23 Q. Aren't those significant questions to
24 know answers to when formulating an opinion as

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1 to what Tina Lindquist did?

2 A. Absolutely not. I am not going to
3 speculate on what she did. She is going to be a
4 human being that you can ask all the questions
5 you want.

6 The fact that you are not skillful
7 enough to get the information when you took her
8 deposition doesn't mean you are going to get it
9 from me on the basis of speculation. I am not
10 going to do that.

11 I will give you principles, but I am
12 not going to speculate what she was doing. If I
13 ask her the questions, then I would take
14 responsibility for all these -- all the
15 questions you are asking, but I haven't
16 interviewed her.

17 Q. Aren't you speculating that her foot
18 moved forward?

19 A. She said that she had her foot outside
20 of the unit.

21 Q. I said aren't you speculating that her
22 foot moved forward?

23 A. It is not speculation. That is a
24 scientific fact. If she has her foot outside of

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1 the unit and she has made the unit activate to
2 hurt her hands, this is a one-note samba. It is
3 not like there is 11 different things that can
4 happen.

5 She has to step into the switch far
6 enough to push the pedal in, to push the lock
7 plate in, push down on the unit in order to have
8 a stroke that will hurt her so that we know this
9 working backwards.

10 Q. Do you know that OSHA in investigating
11 this accident indicated the foot control was
12 properly guarded?

13 A. I don't know anything of the kind.

14 Q. Did you review the OSHA?

15 A. You are certainly not going to try to
16 impress me with what OSHA knows about foot
17 pedals. I hope you are not going to try --

18 Q. I am --

19 A. -- to do that.

20 Q. -- not sure what you mean by that.
21 What do you mean by that?

22 A. Well, first of all, I have had 19
23 contracts with OSHA where I developed a training
24 program that OSHA uses for their compliance

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1 EXAMINATION

2 BY MR. HARTMAN:

3 Q. I am sorry, I just have a couple. I
4 normally wouldn't ask questions, but at one time
5 and I think it is a mistake, but just clarify it
6 for me, you indicated that the Heim machine was
7 a 35 stroke per minute machine?

8 A. Yes.

9 Q. And then another time you indicated
10 that it was a 35 stroke per second machine. I
11 think it is a 35 stroke per minute?

12 A. It is per minute.

13 Q. Okay.

14 A. If it was per second, let me tell you
15 something, it is -- they have a name for it. It
16 is called a hummingbird.

17 Q. I just -- I just don't want it to come
18 back that you --

19 A. Right.

20 Q. -- stated on the record --

21 A. Thank you.

22 Q. The other issue I have is with regard
23 to -- I will grab my note, give me a second, I
24 had it, you indicated that the -- is it ever

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1 safe to have an unguarded foot pedal associated
2 with the press brake?

3 MR. ROBINSON: Object to the form of the
4 question.

5 THE WITNESS: On a general purpose machine
6 it is never safe because the number of scenarios
7 that you have when you have a tethered
8 footswitch that could find itself anyplace on
9 the floor, it means that the folks delivering
10 the new parts to the machine to be processed,
11 the folks that are picking up the finished
12 parts, the people who are doing adjustments and
13 lubrication of the machine, there is an army of
14 people who walk in the area where the footswitch
15 is located, any of these people can step
16 inadvertently into this machine and produce a
17 stroke and so, you know, the rule is to minimize
18 the probability of accidental activation for the
19 environment that the -- that these switches find
20 themselves.

21 And the -- there is no such thing when
22 you have a switch that is meant to be activated
23 by a human being as making it so that you could
24 never activate it because then you could never

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1 run the machine.

2 So what we are trying to do is get
3 controls such that they are sensitive to when we
4 want them to work, they work. When we don't
5 want them to activate, they don't.

6 And that is a real challenge for the
7 technical community and, you know -- you know, I
8 am very proud of the fact that some of the
9 people who make footswitches have been improving
10 their menu of potential devices so that
11 machinery manufacturers can pick ones that come
12 closer to this goal of minimizing accidental
13 activation.

14 MR. HARTMAN: No further questions.

15 THE WITNESS: I do -- I think I have to add
16 something to the thing. Remember I told you
17 that I also have made a mistake in the report
18 and you didn't ask me what that was. But if we
19 would -- if you could give me the Triodyne
20 report, it is one word.

21 MR. ROBINSON: The illustrated?

22 THE WITNESS: Yes. Did you see that in
23 there?

24 MR. ROBINSON: I did. And that's why I

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EXHIBIT “C”

IN THE U.S. DISTRICT COURT
FOR THE WESTERN DISTRICT OF PA

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TINA LINDQUIST,

Plaintiff

vs.

HEIM L.P.,

Defendant

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Case No.

04-249E

COPY

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DEPOSITION OF
KEVIN MESSINGER
JULY 21, 2005

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1 A. No. No.

2 Q. If you look at Exhibit A, Corry
3 Exhibit A, photograph number three, ---

4 A. Uh-huh (yes).

5 Q. --- it shows as pedestal and it
6 shows a foot switch. Do you see that?

7 A. Yes.

8 Q. Were those the pedestal and the
9 foot switch that were existing at the
10 time of Tina Lindquist's injury?

11 A. Yes.

12 Q. Do you know where this foot
13 switch came from?

14 A. That came with the press.

15 Q. Are you certain of that?

16 A. Yes.

17 Q. And how do you know that?

18 A. Because at the time that's the
19 only thing that was on the press. We
20 added the pedestal to the two-hand
21 control.

22 Q. Were you involved with
23 installing this press brake?

24 A. No.

25 Q. Were you present when it was

1 delivered?

2 A. Yes, I was here.

3 Q. Did you see it come with this
4 foot switch which is shown in this
5 photo?

6 A. Yes.

7 Q. Who was involved with installing
8 it?

9 A. I don't remember.

10 Q. Okay.

11 A. I can't really remember. At the
12 time --- we had so many machines come
13 through.

14 Q. If you think of it later, you
15 can let us know?

16 A. Yeah. That one there I've got
17 to think about.

18 Q. Do you know who manufactured
19 this foot switch?

20 A. No, I don't.

21 Q. Do you know if it was sold with
22 the press brake when Heim sold it in
23 1978?

24 A. To my understanding, yes.

25 Q. Do you know?

1 A. No. I actually don't know. I
2 know it came in with it.

3 Q. But you don't know if the
4 auctioneer or any type of middle person
5 supplied that with the press brake to
6 Corry Manufacturing?

7 A. No, I can't say.

8 Q. Do you remember any markings on
9 that foot switch that might identify
10 its manufacturer?

11 A. I can remember the plate, but I
12 cannot remember the maker of it.

13 Q. Did the plate say Heim on it or
14 some other name?

15 A. No. That's a --- it would be
16 --- just got a foot switch that's put
17 on many machines. That I do know.

18 Q. You do know that it did not say
19 Heim?

20 A. It did not say Heim.

21 Q. Okay. Do you know if this foot
22 switch had been used on any other
23 machines at Corry?

24 A. No, only on that machine.

25 Q. Are foot switches unique to

EXHIBIT “D”

IN THE U.S. DISTRICT COURT
FOR THE WESTERN DISTRICT OF PA

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TINA LINDQUIST,	*
Plaintiff	* Case No.
vs.	* 04-249E
HEIM L.P.,	*
Defendant	*

*

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DEPOSITION OF
GARY MERKLE
JULY 21, 2005

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1 switched the operation of the press
2 brake from the foot switch to the
3 two-palm button switch after the
4 accident; is that right?

5 A. No. We went --- rephrase that.

6 Q. Do you remember Corry changing
7 the foot switch application to this
8 press brake to the two-palm button
9 switch before the light curtains
10 arrive?

11 A. What I remember is the machine
12 came in with only the foot switch. We
13 added the palm buttons.

14 Q. And that was before the
15 accident?

16 A. That's correct.

17 Q. I was actually talking about
18 after the accident. Do you remember
19 the foot switch being deactivated?

20 A. Yes.

21 Q. In any event, your point is well
22 take. Corry did all of that; right?
23 They installed the two-palm button
24 switch before the accident?

25 A. That's correct.

1 Q. Why did Corry purchase the parts
2 and instruction manual back in February
3 of 1999?

4 A. I don't know precisely, but all
5 I can gather is that we didn't get one
6 with the machine when it came in.

7 Q. And you mentioned that the
8 machine was purchased at an auction?

9 A. Correct.

10 Q. And do you know from whom the
11 machine was purchased?

12 A. I believe it was Allied, an
13 Allied auction.

14 Q. Yes. That's what the paperwork
15 shows as well, too. Do you know if the
16 machine was purchased by Corry at that
17 auction with the foot switch?

18 A. I believe so, but I'm not sure.

19 Q. Who would know that, if the
20 press brake came with a foot switch at
21 the time it was purchased by Corry at
22 the auction?

23 A. Whoever installed it here.
24 Possibly Jan Oviat.

25 Q. What is Jan's title?

111

1 out at the plant the key is not in the
2 two-palm switch console. Who keeps the
3 key?

4 A. The supervisor would keep it.

5 Q. So the supervisor ---?

6 A. Set-up person, supervisor.

7 Q. So the supervisor would take the
8 key and place it in either the
9 two-prong switch or the foot pedal mode
10 and then take the key and that's how it
11 would operate?

12 A. The set-up person.

13 Q. But it's someone other than the
14 operator?

15 A. Yes.

16 ATTORNEY ROBINSON:

17 Are you saying the key
18 would not ---?

19 ATTORNEY HARTMAN:

20 May I finish?

21 ATTORNEY ROBINSON:

22 I thought you were done.

23 I'm sorry.

24 BY ATTORNEY HARTMAN:

25 Q. So the key is not just left in